

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
AT DAYTON**

GAREY E. LINDSAY, Regional Director
of the Ninth Region of the National Labor
Relations Board, for and on behalf of the
NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

Civil No. 3:17-cv-00126
Judge Rose

MIKE-SELL'S POTATO CHIP COMPANY

Respondent

**PETITIONER'S OPPOSITION TO MOTION TO INTERVENE
BY TEAMSTERS LOCAL UNION NO. 957**

Petitioner Garey E. Lindsay, Regional Director of Region 9 of the National Labor Relations Board, submits this opposition to the motion filed by Teamsters Local Union No. 957, the collective-bargaining representative of some of the employees in the bargaining unit, to intervene in this proceeding seeking preliminary injunctive relief pursuant to Section 10(j) of the National Labor Relations Act. Teamsters Local Union No. 957 is the Charging Party in the underlying administrative proceeding

In seeking temporary injunctive relief under Section 10(j) and 10(l) of the Act, the NLRB acts solely "in the public interest and not in vindication of purely private rights." Senate Report No. 105 on S.1126, 80th Cong., 1st Sess., (April 17, 1947), reprinted in I *Legislative History LMRA 1947* 414 (G.P.O. 1985). See, e.g., *Seeler v. The Trading Port, Inc.*, 517 F.2d 33, 39-40 (2d Cir. 1975) (Section 10(j)); *Hendrix v. Operating Engineers Local 571*, 592 F.2d 437, 441-42 (8th Cir. 1979) (Section 10(l)). It is thus well established that the right to seek a temporary injunction to enjoin unfair labor practices pursuant to Section 10(j) or 10(l) of the Act is *exclusively* within the authority of the Board. See *Amalgamated Clothing Workers of America v.*

Richman Brothers Co., 348 U.S. 511, 516-17 (1955).^{1/} In this regard, a proposed amendment to Section 10(l) of the Act to allow private parties to seek directly in the district courts injunctive relief for certain unfair labor practices was defeated by the 1947 Congress which enacted Section 10(l) and 10(j). See *Muniz v. Hoffman*, 422 U.S. 454, 465-67 (1975) (discussion of legislative history).

It is also well established that a private party cannot intervene by right (see Fed.R.Civ.P. 24(a)(2)) in such proceedings in the district court, *Sears, Roebuck & Co. v. Carpet, etc. Union*, 410 F.2d 1148, 1150-51 (10th Cir. 1969), vacated on other grounds as moot, 397 U.S. 655 (1970),^{2/} for to do so would interfere with the exclusive jurisdiction which has been vested in the NLRB by Congress and would give such party a right independently to appeal or to seek a contempt citation. See *Penello v. Burlington Industries, Inc.*, 54 LRRM 2165 (W.D. Va. 1963). See also *McLeod v. Business Machine Conference Board*, 300 F.2d 237, 242-43 (2d Cir. 1962) (charging party not permitted to raise issues in 10(l) proceeding which are not raised by the Regional Director). In addition, a private party cannot intervene in such proceedings at the appellate level. See *Hirsch v. Building and Construction Trades Council of Phila. & Vicinity, AFL-CIO*, 530 F.2d 298, 307-08 (3d Cir. 1976).^{3/}

It is similarly well established that the right to seek contempt of a court decree enforcing a NLRB order resides exclusively in the NLRB, inasmuch as the NLRB seeks judicial

^{1/} Accord: *Walsh v. I.L.A.*, 630 F.2d 864, 871-72 (1st Cir. 1980); *California Assoc. of Employers v. BCTC of Reno, Nevada*, 178 F.2d 175 (9th Cir. 1949); *Amalgamated Assoc. of Street and Motor Coach Employees v. Dixie Motor Coach Corp.*, 170 F.2d 902 (8th Cir. 1948); *Amazon Cotton Mill Company v. Textile Workers Union of America*, 167 F.2d 183 (4th Cir. 1948); *Brown & Sharpe Mfg. Co. v. District 64, IAM*, 535 F.Supp. 167, 169 n. 2 (D. R.I. 1982).

^{2/} Accord: *Squillacote v. Local 578, Auto Workers*, 383 F.Supp. 491, 492 (E.D. Wisc. 1974); *Wilson v. Liberty Homes, Inc.*, 500 F.Supp. 1120, 1123 (W.D. Wisc. 1980), affd. as mod. 108 LRRM 2699 (7th Cir. 1981), vacated as moot 109 LRRM 2492, 673 F.2d 1333 (7th Cir. 1982); *Reynolds v. Marlene Industries Corp.*, 250 F.Supp. 722, 723-24 (S.D. N.Y. 1966); *Philips v. Mine Workers, District 19*, 218 F.Supp. 103, 105-06 (E.D. Tenn. 1963); *Boire v. Pilot Freight Carriers, Inc.*, 86 LRRM 2976, 2978 (M.D. Fla. 1974), affd. 515 F.2d 1185 (5th Cir. 1975), reh. denied, 521 F.2d 795, cert. denied, 426 U.S. 934 (1976).

^{3/} Accord: *Solien v. Miscellaneous Drivers etc.*, 440 F.2d 124, 129-32 (8th Cir. 1971), cert. denied 403 U.S. 905; *Henderson v. Operating Engineers, Local 701*, 420 F.2d 802, 806 fn. 2 (9th Cir. 1969); *Compton v. N.M.U.*, 533 F.2d 1270, 1276 fn. 4 (1st Cir. 1976).

enforcement of its orders as a "public agent." See *Amalgamated Utility Workers v. Consolidated Edison Company of New York, Inc.*, 309 U.S. 261, 269 (1940); *May Department Stores Co. v. NLRB*, 326 U.S. 376, 388 (1945).^{4/}

Since the NLRB similarly acts to vindicate solely the public interest under Section 10(j) and 10(l) of the Act, see *Fleischut v. Nixon Detroit Diesel, Inc.*, 859 F.2d 26, 30 (6th Cir. 1988) and cases cited therein, the right to seek a contempt adjudication of an order granting a temporary injunction pursuant to Section 10(j) or 10(l) of the Act similarly resides exclusively in the NLRB. See *Shore v. Building and Construction Trades Council*, 50 LRRM 2139 (W.D. Pa. 1962) (motion by nonparty employer in 10(l) proceeding to adjudicate respondent union in contempt, denied on basis that only NLRB can bring contempt action; Fed.R.Civ.P. 71 held not applicable).^{5/} Thus, while the courts have the inherent power to enforce compliance with their lawful orders through civil contempt, e.g., *Shillitani v. U.S.*, 384 U.S. 365, 370 (1966), charging parties may not be permitted to pursue independently contempt petitions in 10(l) and 10(j) cases which would intrude upon the Board's exclusive authority to initiate and enforce these types of proceedings. See *Shore v. Building and Construction Trades Council*, 50 LRRM at 2141. Accord: *Philips v. Mine Workers, District 19*, 218 F.Supp. at 107-08 (charging party has no right to continue 10(l) decree or to seek contempt adjudication over objection of Regional Director).^{6/}

^{4/} See also *NLRB v. Shurtenda Steaks, Inc.*, 424 F.2d 192 (10th Cir. 1970); *Vapor Blast Shop Worker's Association v. Simon*, 305 F.2d 717 (7th Cir. 1962); *NLRB v. Retail Clerks International Association*, 243 F.2d 777 (9th Cir. 1956).

^{5/} See also *Moore v. Tangipahoa Parish School Board*, 625 F.2d 33, 34 (5th Cir. 1980)(Fed.R.Civ.P. 71 does not allow a nonparty to enforce a court decree where such person has no standing to sue). Cf. *Evans v. International Typographical Union*, 81 F. Supp. 675, 678 (S.D. Ind. 1948) (power to initiate and prosecute temporary injunction proceeding under Section 10(j) carries with it the incidental and inherent authority to institute contempt proceedings).

^{6/} Compare the Ninth Circuit's decision in *NLRB v. Retail Clerks International*, 243 F.2d at 782-83 (charging party has no standing to seek injunctive relief to enforce prior court decrees where Board was not seeking such relief) with *Retail Clerks v. Food Employers Council*, 351 F.2d 525, 529 (9th Cir. 1965) (district court has jurisdiction, once Regional Director files 10(l) petition, to grant appropriate relief different from that proposed by the Regional Director).

Petitioner would not be opposed to Teamsters Local Union No. 957 being granted a role as an active amicus curiae. However, Petitioner did not seek such status in its motion filed on May 3, 2017.

Conclusion:

For the foregoing reasons, Petitioner submits that the Movant has failed to demonstrate that it has an interest sufficient to justify intervention as a matter of right or discretion. Therefore, the Motion to Intervene of Teamsters Local Union No. 957 should be denied.

Dated at Cincinnati, Ohio, this 5th day of May, 2017.

/s/ Eric A. Taylor

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Attachments

CERTIFICATE OF SERVICE

May 5, 2017

I hereby certify that on May 5, 2017 I filed the foregoing with the Clerk of Court, and I hereby certify that I have also sent notification to the following electronically and by United States Postal Service:

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Dated at Cincinnati, Ohio this 5th day of May 2017.

/s/ *Eric A. Taylor*

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